

House File 2332 - Introduced

HOUSE FILE 2332

BY FORD

A BILL FOR

1 An Act relating to the distribution, possession, and reporting
2 of obscene material and making penalties applicable.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 728.1, subsection 3, Code 2009, is
2 amended to read as follows:

3 3. "*Material*" means any book, magazine, newspaper or
4 other printed or written material or any picture, drawing,
5 photograph, motion picture, or other pictorial representation
6 or any statue or other figure, or any recording, transcription
7 or mechanical, chemical or electrical reproduction, or any live
8 transmission, or any other articles, equipment, machines or
9 materials.

10 Sec. 2. Section 728.1, subsection 7, paragraphs e and g,
11 Code 2009, are amended to read as follows:

12 e. Sadomasochistic abuse of a minor for the purpose of
13 arousing or satisfying the sexual desires of a person who may
14 view a visual depiction of the abuse.

15 g. Nudity of a minor for the purpose of arousing or
16 satisfying the sexual desires of a person who may view a
17 visual depiction of the nude minor.

18 Sec. 3. Section 728.1, Code 2009, is amended by adding the
19 following new subsection:

20 NEW SUBSECTION. 11. "*Visual depiction*" means but is
21 not limited to any picture, slide, photograph, digital or
22 electronic image, negative image, undeveloped film, motion
23 picture, videotape, digital or electronic recording, live
24 transmission, or other pictorial or three-dimensional
25 representation.

26 Sec. 4. Section 728.12, subsection 1, Code 2009, is amended
27 to read as follows:

28 1. It shall be unlawful to employ, use, persuade, induce,
29 entice, coerce, solicit, knowingly permit, or otherwise cause
30 or attempt to cause a minor to engage in a prohibited sexual
31 act or in the simulation of a prohibited sexual act. A person
32 must know, or have reason to know, or intend that the act
33 or simulated act may be photographed, filmed, or otherwise
34 preserved in a ~~negative, slide, book, magazine, computer,~~
35 ~~computer disk, or other print or visual medium, or be preserved~~

1 ~~in an electronic, magnetic, or optical storage system, or in~~
 2 ~~any other type of storage system~~ visual depiction. A person
 3 who commits a violation of this subsection commits a class
 4 "C" felony. Notwithstanding section 902.9, the court may
 5 assess a fine of not more than fifty thousand dollars for each
 6 offense under this subsection in addition to imposing any other
 7 authorized sentence.

8 Sec. 5. Section 728.12, subsection 3, unnumbered paragraph
 9 1, Code 2009, is amended to read as follows:

10 It shall be unlawful to knowingly purchase or possess a
 11 ~~negative, slide, book, magazine, computer, computer disk, or~~
 12 ~~other print or visual medium, or an electronic, magnetic, or~~
 13 ~~optical storage system, or any other type of storage system~~
 14 ~~which depicts~~ visual depiction of a minor engaging in a
 15 prohibited sexual act or the simulation of a prohibited sexual
 16 act. A person who commits a violation of this subsection
 17 commits an aggravated misdemeanor for a first offense and a
 18 class "D" felony for a second or subsequent offense. For
 19 purposes of this subsection, an offense is considered a second
 20 or subsequent offense if, prior to the person's having been
 21 convicted under this subsection, any of the following apply:

22 Sec. 6. Section 728.14, subsections 1 and 2, Code 2009, are
 23 amended to read as follows:

24 1. A commercial film and photographic print processor
 25 who has knowledge of or observes, within the scope of the
 26 processor's professional capacity or employment, a ~~film,~~
 27 ~~photograph, video tape, negative, or slide which depicts~~ visual
 28 depiction of a minor whom the processor knows or reasonably
 29 should know to be under the age of eighteen, engaged in a
 30 prohibited sexual act or in the simulation of a prohibited
 31 sexual act, shall report the visual depiction to the county
 32 attorney immediately or as soon as possible as required in this
 33 section. The processor shall not report to the county attorney
 34 visual depictions involving mere nudity of the minor, but shall
 35 report visual depictions involving a prohibited sexual act.

1 This section shall not be construed to require a processor
2 to review all ~~films, photographs, video tapes, negatives, or~~
3 ~~slides~~ visual depictions delivered to the processor within the
4 processor's professional capacity or employment.

5 2. For purposes of this section, "*prohibited sexual act*"
6 means any of the following:

7 *a.* A sex act as defined in section 702.17.

8 *b.* An act of bestiality involving a minor.

9 *c.* Fondling or touching the pubes or genitals of a minor for
10 the purpose of arousing or satisfying the sexual desires of a
11 person who may view a visual depiction of the act.

12 *d.* Fondling or touching the pubes or genitals of a person by
13 a minor for the purpose of arousing or satisfying the sexual
14 desires of a person who may view a visual depiction of the act.

15 *e.* Sadomasochistic abuse of a minor for the purpose of
16 arousing or satisfying the sexual desires of a person who may
17 view a visual depiction of the abuse.

18 *f.* Sadomasochistic abuse of a person by a minor for the
19 purpose of arousing or satisfying the sexual desires of a
20 person who may view a visual depiction of the abuse.

21 *g.* Nudity of a minor for the purpose of arousing or
22 satisfying the sexual desires of a person who may view a
23 visual depiction of the nude minor.

24 ~~2.~~ 3. A person who violates this section is guilty of a
25 simple misdemeanor.

26 EXPLANATION

27 This bill relates to the possession or distribution of
28 obscene material.

29 The bill modifies the definition of "material" in Code
30 chapter 728 to include live transmissions.

31 Under the bill, the modification of the definition of
32 the term "material" results in changes to the elements of
33 the following criminal offenses within Code chapter 728:
34 dissemination of obscene material to minors (Code section
35 728.2), admitting minors to premises where obscene material is

1 exhibited (Code section 728.3), rental or sale of hard-core
2 pornography (Code section 728.4), sexual exploitation of a
3 minor (Code section 728.12(2)), and telephone dissemination of
4 obscene material (Code section 728.15).

5 The bill also defines the term "visual depiction" within
6 Code chapter 728 to include any picture, slide, photograph,
7 digital or electronic image, negative image, undeveloped film,
8 motion picture, videotape, digital or electronic recording,
9 live transmission, or other pictorial or three-dimensional
10 representation.

11 The changes in the bill to the criminal offense of sexual
12 exploitation of a minor in Code section 728.12(3) are in
13 response to the State v. Muhlenbruch, 728 N.W.2d 212 (Iowa
14 2007).

15 The bill modifies the elements of the criminal offense
16 of sexual exploitation of a minor in Code section 728.12(3)
17 by substituting references for a computer and other types of
18 storage systems with the term "visual depiction" as defined
19 by the bill. The bill also substitutes "visual depiction"
20 for storage systems referenced in Code sections 728.12(1) and
21 728.14 to conform with the sexual exploitation of a minor
22 changes in Code section 728.12(3) due to the Muhlenbruch case.

23 In addition, the word "visual" is added before the word
24 "depiction" throughout Code chapter 728 to conform with the
25 changes made by the bill.